



# Business League for Massage Therapy & Bodywork (BLMTB)

PO Box 682 · Roundup, MT 59072  
[www.blmtb.org](http://www.blmtb.org) email: [info@blmtb.org](mailto:info@blmtb.org)

October 1, 2005

Patricia Murdo  
Economic Affairs Interim Committee Staff  
Legislative Services Division  
PO Box 201706  
Helena, MT 59620-1706

Re: SJR 35 – Study Group

Dear Ms. Murdo,

We were surprised, but delighted that you saw fit to include some of our comments in both of your reports (*Board ABCs*, and *SJR 35 Survey Preliminary Results*). We've reviewed the policy questions included in your email and your mandate to "Please include ... a perspective for how a new board fits into the existing picture". We hope that the comments contained herein are also helpful.

Unfortunately, since our Montana board members work during the week, do not live in Helena, and do not have the finances to hire a lobbyist to protect our interests, we will not be attending the Study Group meeting on October 12.

## Policy Questions:

***A) Can improvements be made in reference to types of boards to better meet public health, safety, welfare issues -- title or title/practice boards, quasi-judicial boards, or boards' administrative attachment?***

- Before determining the answer to any "public health, safety, and welfare issue, define what that means first. Determine what criteria must be met in order to protect the public.
  - In *Board ABC's*, in the "Board Creation" Subsection, you state that
    - Usually the constituency provides a public rationale for the existence of a board in terms of protecting public health, safety, welfare, or the "common good".
  - It **is** in the public welfare to protect the "common good".
    - As a non-regulated profession that would like to be regulated, the threat to our scope of practice by already regulated professions is very real.
  - It **is** in the public's interest to protect access to a profession with its commonly accepted scope of practice intact, and in fact is necessary to ensure the survival of marginalized or currently unregulated professions. There are several ways for the legislature to do this:
    1. Pass a Freedom of Access Law similar to Minnesota, California or Rhode Island (modeled after MN)
    2. Create competency-based scopes of practice that allow for overlap of scopes of practice
    3. Adopt a stance that overlapping scopes of practice do indeed exist, and instead of limiting it, embracing it: it will actually benefit the consumer, drive down costs, enhance competition, and improve accessibility to services.

- Such criteria should Not include any of the old Sunrise Criteria (2-8-204, MCA) that boards demonstrate that: "the scope of practice is readily identifiable and easily distinguished from the scope of practice of other professions and occupations; ... and no other board licenses a similar or closely related occupation or profession" (taken from *SJR 35 Survey Preliminary Results*).

Because overlap of scope of practice is, in our opinion, the primary reason for opposition of new professional regulation (and/or legislative restriction of that new profession's scope), we are adamantly against any resurrection of this type of language. If these criteria did not create the problem, it certainly has contributed to it and is particularly devastating to professions where such overlap exists. It is particularly harmful to Complementary and Alternative professions that are seeking recognition now.

- Title licensure should be granted to "non-invasive" professions (such as massage therapy). Practice acts should be reserved for the professions that require a high threshold of public safety (for example: the Practice of Medicine).
  - In Title Acts, the title is reserved for those meeting the practice criteria, but the practice is not restricted (as long as the title is not used, a practitioner may perform the practice). Since "harm" is not an issue with the public for these professions, restriction of practice is not necessary.
  - We believe that a title act/ board serves the consumer (the public) and the profession by:
    1. defining (thus protecting) the scope of practice of the profession which ensures consumer access
    2. defining standards so that consumers can be fully informed
    3. providing a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.
- Boards should be established no matter if it is a title or practice act.
  - At a minimum, all boards should make discretionary decisions while the department makes non-discretionary ones.
 

In developing criteria for usage of a title and policy, it seems that a board would be particularly helpful. A board could provide guidance in policy/rule application and in situations where the criteria/policy is subjective (there will always be an element of subjectivity even when objectivity is desired). The same would be true in the case of a title/practice board. We believe that members of the profession (along with its citizen members) would be better suited to understanding the needs of that profession than departmental personnel when it came to development of policy and application of criteria.
- The BLMTB also supports establishing voluntary advisory councils consisting of professional members.
  - They can assist in the development of a board and in rules and regulations
  - Newly appointed board members will have an informational resource
- We have no opinion on quasi-judicial boards.

***B) How can membership composition be improved or revised to better address boards' public health, welfare, safety mandate? -- ratio of specialists on multispecialization boards and number of public members?***

- From our perspective, this question folds another topic into it: combining boards.  
The BLMTB is very concerned about combining boards.
  - In some instances combining boards makes sense: for example when there is significant overlap of practice (i.e. Osteopaths joining the Board of Medical Examiners). Where there is no significant overlap it does not.
  - We assume that these issues will be fully discussed as part of Study Group 3(d) Scope of Practice/Umbrella boards, and will withhold our comments until that time. If it is to be discussed in this context, please inform us and we will provide that information.
- Public members are a vital part of any board. Every board should have at least 2, if not more, public members.
- If there is a screening board / arbitration board / umbrella board whose purpose is to mediate cross-jurisdictional issues, that board should be made up of solely public members.
  - Members of the profession present their case and are available to answer questions only
  - Professional members would be biased toward their profession or the protection of related professions and would not be impartial or unbiased. A strictly consumer board would decide based on the merits of the arguments and ideally not on politics or professional bias.
- The needs of the board should determine the numbers on the board, but it could be based on a standardized model.
  - Single profession boards should have no more than 5 members, 2 of them public members  
However, if the board oversees a large number of disciplinary actions, then to facilitate their work screening panels would be necessary. Since, by statute, members of the screening panel cannot participate in the hearings, the board may be larger to ensure that there are enough members to hear the case. Some boards don't have a large number of disciplinary actions, so screening panels may not be effective for them.
  - If a "big" board is combined with smaller boards, then this multispecialty board should have numbers based on the number of specialties. The combined number of smaller board representatives and public members should outnumber the big board representation.  
This ensures that if the big board members get out of control, they can be reigned in by the other members. Yet, the big board members should have greater influence over the board if they can convince others to go along with them  
One suggestion: the largest profession gets 2 members, then for every specialty member added, an additional member. This, coupled with the two public members ensures that the "big" board is always outnumbered by the others combined.
- A board member's term is standardized to 4 years, with all board members terms staggered.  
No Term Limits
  - Since the governor appoints the boards, the total composition of the board can turn over in this time frame. This allows for each governor to have an opportunity to change board composition and provides for a form of term limitation

- The terms are staggered to provide for continuity
- It can be difficult enough to find board members who are willing to serve; limiting the terms of the willing and competent does not serve the public.

***C) Can changes be made to improve administrative attachment -- this section (2-15-121, MCA) affects staffing, budgeting, rule adoption, quasi-judicial and quasi-legislative functions as well as report submission and representation.***

- We have read the pertinent sections of MCA and have a few questions/comments.
  - How can the board function independently if it is budgeted through the department (who controls the purse strings, controls the board)? (MCA 2-15-121 (1)a&b)
  - Can the department represent the board in communications with the governor when the board and department have differences of opinion? What safeguards are there to ensure that the communications are accurate? (MCA 2-15-121 (3)a)
  - Since some boards have executive staff (director or secretary), it might be helpful to develop guidelines for when executive staff is hired, and guidelines for agency/board input or control over that hiring. Whether that is done legislatively or departmentally should be up to those who have a stake in the process. At this time, the BLMTB doesn't.
- Rule Adoption: any rules pertaining to the regulation of the practice itself and are unique to that board should be developed by the board. Other kinds of rules that are common to all (renewals, fees, etc.) could be standardized by the department with board input or exceptions made with compelling reasons.
- In the beginning, particularly when establishing a new board, and particularly in the instance of massage therapy, most licensing should be handled by the board until guidelines are set up.
  - A voluntary advisory council would be helpful in this process.
  - Licensing functions can be transitioned over to departmental staff as they begin to understand how the guidelines are applied, along with provisions for when the board should handle the licensing (when is licensing not "routine" as provided in statute).
- For the most part, since our profession is not currently regulated, we have no other insight into the section as we are not aware of the issues involved. However, if some of the issues were presented to us, we might have an opinion as to how we think it might affect a new board.

***3) Dividing into further study groups as needed to address the following policies at a later date:***

***a) investigations and enforcement/discipline***

***b) regulation of profession as well as practitioners***

***c) role of a board beyond licensing and discipline (continuing ed, impairment programs)***

***d) scope of practice/umbrella boards***

***e) board creation/dissolution.***

- Please sign the BLMTB up for all the study groups. While we may not be able to make the meetings we would be more than willing to submit written comments.
- In your email, you mention that all written comments will be shared. We would appreciate receiving those comments as well.

In closing, we appreciate the opportunity to provide feedback and input into the process. We must however comment that while we are hopeful that many others who are currently not regulated are giving their input, we are concerned that the professions who are already regulated would have input into the process whereby new professions enter the fold. In essence, the system as it is set up now protects those already regulated.

Of course they want professions to be distinct, as it limits anyone encroaching on their turf

Of course they want everyone to be licensed as it does limit competition

Of course they want to limit the scopes of other professions, to protect their market and financial stake  
And of course this harms the consumer because it drives up costs, restricts access, and limits quality care.

While we continue to be hopeful, we see that there are opportunities for conflict of interest.

We appreciate the work that you have put into this project and your determination that everyone's voice be heard. It is a difficult job to synthesize the competing views of the many constituencies and thus far you have done a commendable job!

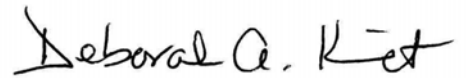
Sincerely,



Vianna Rose Myles



Paige Asten



Deborah A. Kimmet